

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 1/12/2021 9:42:13 PM
To: Weiler, Katherine [Weiler.Katherine@epa.gov]
CC: Frazer, Brian [Frazer.Brian@epa.gov]
Subject: RE: ACTION due noon Friday, January 15, 2021: Compiling policies for the elevation of disputes between EPA and State/Tribes
Attachments: 233_50.docx; Programmatic Agreement - 12-16-20.pdf; FL404BiOp_Final_Signed.pdf; EPA-FL MOU.pdf

Hi Katherine,

Across OWCD, we have only identified elevations for states/tribes in the 404g program.

1. The regulations at 40 CFR 233.50 have an oversight process that lays out procedures for states, tribe, or other interested person who may disagree with EPA's comments, objection or conditions on a permit may seek a hearing. I attached the section.
2. As part of Florida's recent assumption of the CWA 404 dredged and fill permitting program, EPA has approved elevation procedures with respect to state of Florida Clean Water Act 404 permits where they may adversely effect threatened or endangered species or Historic Properties. These elevation procedures can be found in the EPA-FDEP MOA (Part II, Section D), the Programmatic Agreement under the National Historic Preservation Act (and associated Operating Agreement) (pages 4 and 6), and the Biological Opinion issued by the USFWS under ESA (pages 29 and 30). Attached.

Kathy Hurd should be the POC if it is okay for staff level – she serves as the Clean Water Act 404(g) – U.S. EPA Lead. Otherwise, put me down.

thanks

Mindy Eisenberg
Associate Director, Oceans, Wetlands & Communities Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4504T
Washington, DC 20460
Cell **Ex. 6 Personal Privacy (PP)**
eisenberg.mindy@epa.gov

From: Weiler, Katherine <Weiler.Katherine@epa.gov>
Sent: Wednesday, January 06, 2021 5:22 PM
To: Frazer, Brian <Frazer.Brian@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>; Yusuf, Istanbul <Yusuf.Istanbul@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Goodin, John <Goodin.John@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>
Subject: ACTION due noon Friday, January 15, 2021: Compiling policies for the elevation of disputes between EPA and State/Tribes

OWCD, WRAPD,

OW is looking for each office to provide currently used elevation processes (e.g. as documented in elevation memorandums of understanding, policies, guidance, etc.) for disagreements with State and Tribal leaders (background information below). By Friday 1/15/21, please provide me with your single Division response.

For each elevation process, please provide the following:

- The entire document where the elevation policy is embedded (e.g., pdf or word document, and link if applicable)

- The citation for the document outlined exactly where in the document the elevation policy is located (e.g., page number, paragraph number, etc.)
- Point of Contact (e.g., both name and position title)

If you have a less formal elevation processes (those that are not specifically in policies, guidance, MOUs, etc.), please provide as much of the details available for those as well because OW is considering including.

Thanks!
Katherine

Background on the request from Sheila Frace:

Over the last year, a workgroup comprised of region and headquarters representatives have been working to draft an elevation policy that can be used in the absence of previously established and agreed to elevation policies between EPA and States/Tribes. The attachment is a version that currently is being vetted with OA sponsors and is included as an, FYI only. I am not convinced this will meet expectations any more than the earlier version I shared with you in May. (Subsequent to sharing that version with Senior Leadership, the Workgroup was sent back to the drawing board.)

In drafting this elevation policy, we were acutely aware that there are already multiple elevation policies throughout the agency. In order to avoid confusion of when this policy can be used, the Workgroup has reached out through the lead region coordinators to try to obtain a better sense of the universe of current and active elevation processes maintained by the Regions. I am working with Miriam to help compile those programmatic-level elevation policies maintained by Office of Water.